

Andhra Pradesh High Court - Amravati

Veeranki Lakshmi vs The State Of Andhra Pradesh on 12 May, 2023

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND

THE HON'BLE SRI JUSTICE V.SRINIVAS

WRIT PETITION No.5334 of 2023

ORDER:(per Hon'ble Sri Justice V.Srinivas)

In this writ petition, the petitioner is challenging the order of detention of her husband by name Veeranki Rambabu, S/o.Pedalaxmayya, aged 38 years, vide Roc.No.C1/e-34196/2022, dated 19.12.2022 passed by the 2nd respondent-

The Collector and District Magistrate, West Godavari District, which was confirmed by the 1st respondent vide G.O.Rt.No.304, General Administration (SC.I) Department, dated 10.02.2023 and prays to direct the respondent authorities to set the detenu at liberty forthwith.

2. The 2nd respondent District Collector, West Godavari District, while categorizing the detenu as a "Bootlegger" within the definition of Section 3(2) r/w.3(1) of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the Act 1 of 1986') passed the impugned order of detention. The same was confirmed by the 1st Respondent-State.

3. Heard Sri Kanukolanu Sai Sanjay, learned counsel for the petitioner and Sri Syed Khader Mastan, learned counsel attached to the office of learned Additional Advocate General for the respondents.

4. Learned counsel for the petitioner submits that the impugned order of detention was passed basing on vague, irrelevant and non-existing grounds; that the offences alleged against the detenu is under Section 7(A) and 7(B) r/w.8(B) and 8(E) of Andhra Pradesh Prohibition Act, 1995 and they can be dealt under general laws. It is also stated that out of five crimes, the detenu was already granted bail in four crimes and in one crime he was issued Section 41(a) Cr.P.C. notice; that the sponsoring authority did not place the copies of bail orders along with grounds of detention before the detaining authority to come to the right conclusion and that the detention authority erred in passing the impugned order without considering the bail orders. He relied upon judgements of this Court in W.P.Nos.5469 of 2022 and 15670 of 2022 and copies of the same are placed on record.

5. Per contra, Sri Syed Khader Mastan, learned counsel attached to the office of Additional Advocate General reiterating the averments made in the counter affidavit filed by the respondents, justifying the order of the District Magistrate as the detenu is a habitual offender and argues that his acts are prejudicial to the public order and that he is a bootlegger who is selling adulterated liquor. He further states that the order impugned in the writ petition do not warrant any interference of this

Court under Article 226 of the Constitution of India.

6. A perusal of the order passed by this Court in W.P.No.5469 of 2022 dated 11.07.2022 clearly demonstrates that the existence of element of disturbance to the public order is held to be a sine qua non for invoking the provisions of Section 3 of the Act 1 of 1986. The said power, conferred on the authorities, is required to be exercised with a lot of care, caution and circumspection and that same cannot be exercised in a routine and mechanical manner. In Chittipothula China Muthyalu (W.P.No.5469 of 2022), this Court considering the rule position stated in Ram Manohar Lohiya v. State of Bihar¹, Piyush Kanthilal Mehatha v. Commissioner of Police Ahmedabad City², Malladha K.Sriram v. State of Telangana³, held that the satisfaction, as stipulated under Section 3 of the Act, should necessarily be a subjective satisfaction but is required to be on the basis of cogent and convincing material and not on the foundation of stale and sterile reasons. Recording of reasons for 1 AIR 1966 SC 740 2 1989 Supp (1) SCC 322.

3 2022 SCC OnLine SC 424 such satisfaction is also indispensable and imperative. So long as ordinary criminal law is adequate to deal with the offences, preventive detention without subjecting an individual to the procedure of free and fair trial would infringe the fundamental right to life and liberty guaranteed under Chapter III of Constitution of India. The alleged offences are under the Prohibition laws only.

7. In the present case also the detenu was already enlarged on bail even prior to detention order and the said fact is not disputed by the respondents. Moreover, in Cr.No.216 of 2020 of Tadikalapudi P.S., the police themselves issued notice under Section 41(A) Cr.P.C. and asking the detenu to offer his explanation for the purpose of investigation. It does mean to say the prosecution itself is not sure as the detenu is an accused in the said crime i.e., Cr.No.216 of 2020, for that reason he was given Section 41(A) Cr.P.C. notice and as indicated above in the remaining cases the detenu was already granted bails. A perusal of the detention order and grounds of detention, would show the detaining authority as well sponsoring authority has not taken into consideration the said fact and no opinion has been expressed as to whether the preventive detention of detenu was essential or not, and no such discussion was made in the order. Further it is not the case of the respondents that the detenu has committed breach of conditions of the bails. The further satisfaction that needs to be recorded in such cases that he will commit further crimes is not clear. It is not clear how the authority came to the conclusion that the ordinary law is not sufficient to stop the alleged crimes.

8. Having regard to the facts of this case, this Court is of the considered opinion that the order impugned was made without proper application of mind and there is a serious procedural violation. The detenu will not fall under the category of Section 3(2) r/w.3(1) of the Act and this Court could not find that the order of detention has any material to either substantiate or justify the said allegation that the detenu is a 'Bootlegger' whose activities would be actually prejudicial to public order.

9. For the reasons recorded, this Writ Petition is allowed, setting aside the order of detention passed by the 2nd respondent vide proceedings in Roc.No.C1/e-34196/2022, dated 19.12.2022 as

confirmed by the State Government vide G.O.Rt.No.304, General Administration (SC.I) Department, dated 10.02.2023. Consequently, the detenu namely Veeranki Rambabu, S/o.Pedalaxmayya, aged 38 years, is directed to be released forthwith by the respondents if the detenu is not required in any other cases. No order as to costs.

10. Miscellaneous petitions pending if any, stand closed.

----- JUSTICE D.V.S.S.SOMAYAJULU

JUSTICE V.SRINIVAS Date: 12.05.2023 Note: Issue C.C. today
B/o.

Krs THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU AND THE HON'BLE SRI JUSTICE
V.SRINIVAS WRIT PETITION No.5334 of 2023 DATE: 12.05.2023 Krs